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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 MARCELO MUTO, *et al.*,
17 Plaintiffs,

18 v.

19 FENIX INTERNATIONAL LIMITED;
20 FENIX INTERNET LLC,

21 Defendants.

Case No. 5:22-cv-02164-SSS-KK

**PLAINTIFFS' NOTICE OF MOTION,
MOTION TO PROCEED
ANONYMOUSLY, MEMORANDUM
IN SUPPORT, AND REQUEST TO
FILE DECLARATIONS UNDER SEAL**

Judge: Hon. Sunshine S. Sykes
Date: September 15, 2023
Time: 2:00 pm
Courtroom: Courtroom 2

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on September 15, 2023, in Courtroom 2, before
3 Judge Sunshine S. Sykes of the United States District Court for the Central District of
4 California, Plaintiffs John Doe 1 (“Doe 1”) and John Doe 2 (“Doe 2”) will move this
5 court for an order permitting them to proceed anonymously in this matter against
6 Defendants Fenix International Limited and Fenix Internet, LLC (“Defendants”) using
7 only pseudonyms, Doe 1 and Doe 2.

8 On August 7, 2023, at 10:30 AM central time / 8:30 AM Pacific, counsel for the
9 parties met and conferred on this motion. Counsel for Plaintiffs included Zachary Freese
10 and Killian Commers. Counsel for Defendants included Jonathan Drenfeld and Thomas
11 Fu. Pursuant to the meet and confer process, counsel for the parties reached agreement
12 on several matters pertaining to this motion, but Defendant reserved certain rights.

13 This motion is based on this Notice of Motion and Motion to Proceed
14 Anonymously, the supporting memorandum, all pleadings and records in this matter, and
15 any other arguments and evidence presented to this Court at or before the hearing on this
16 motion.

17 Respectfully submitted,

18 ZIMMERMAN REED LLP

19 Date: August 24, 2023

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

I. INTRODUCTION

Pursuant to the principals set forth in *Does I through XXIII v. Advanced Textile Corp.*, 214 F.3d 1058 (9th Cir. 2000), to protect their privacy and guard against disclosure of certain potentially embarrassing and sensitive information, Plaintiffs John Doe 1 and John Doe 2 (“Plaintiffs”) initially filed this action using fictitious names. Those Plaintiffs now move the court for permission to allow them to proceed anonymously for the following reasons:

First, Plaintiffs wish to preserve their right to privacy, as there is a social stigma surrounding public disclosure of the use of the “OnlyFans” platform operated by Defendants Fenix International Limited and Fenix Internet, LLC (“Defendants”), due to the general nature of the adult or otherwise private content published on the website or application and accessed. There is a strong precedent for courts to allow plaintiffs in a civil action to proceed anonymously when nondisclosure is necessary to protect a person from harassment, injury, ridicule, or personal embarrassment. There have been documented instances of OnlyFans users being subjected to unwarranted contact or media exposure. Plaintiffs should be allowed to preserve their right to privacy while pursuing their claims under California state statute. Notably, courts in other matters have allowed plaintiffs to move forward anonymously in suits against Fenix and OnlyFans. *See, e.g., Doe v. Fenix Internet LLC*, No. 1:21-cv-6624 (N.D. Ill., filed Dec. 10, 2021).

Second, there is no prejudice to Defendants in allowing Plaintiffs to move forward using fictitious names. Shortly after filing this action, Plaintiffs’ counsel provided the identities of Doe 1 and Doe 2 to Defendants’ counsel so it could defend any claims. For many of the same reasons, Defendants themselves, in the routine course of business, allows both users and content providers on the OnlyFans platform to use pseudonyms or nicknames instead of publishing their true legal names when using the site. Defendants possess the requisite information to properly contest Plaintiffs claims, including all information associated with each account.

1 *Third*, there is no harm to public interest in allowing Plaintiffs to proceed
 2 anonymously. Concealing Plaintiffs' identities will in no way affect the public's ability
 3 to monitor this matter and scrutinize the legal issues involved in the case. However,
 4 allowing Plaintiffs to conceal their identities will protect Plaintiffs from possible
 5 harassment or personal embarrassment involved with disclosing their use of the OnlyFans
 6 platform. This will also ensure the most vigorous prosecution of this case for the benefit
 7 of the absent class members as otherwise, if required to proceed only using their legal
 8 names, the Doe Plaintiffs may be reluctant to proceed to the detriment of the class. As
 9 one of the primary remedies sought in this case is injunctive relief, sought for the benefit
 10 of other users, such claims should be encouraged to vindicate those persons' legal rights,
 11 not discouraged. Allowing the Doe Plaintiffs, who may have viewed sensitive and
 12 potentially embarrassing material on the OnlyFans platform, to proceed as representative
 13 plaintiffs on common claims helps further these policies, while prejudicing no one.

14 Applying the relevant case law, an anonymous proceeding is appropriate in this
 15 matter challenging Defendants' auto-renewal practices, including ongoing and
 16 continuing violations of California state law.

17 **II. RELEVANT FACTUAL BACKGROUND**

18 Plaintiffs John Doe 1 and John Doe 2 (the "*Doe* Plaintiffs") filed their Class Action
 19 Complaint against Defendants in Los Angeles County Superior Court on June 1, 2023.
 20 The *Doe* case was removed to this District on April 20, 2023, *See Doe, et al. v. Fenix*
 21 *Internet LLC, et al.*, No. 2:23-cv-03005-SSS-KK, (C.D. Cal. Apr. 20, 2023). Thereafter,
 22 the *Doe* action was consolidated with *Muto, et al. v. Fenix International Limited, et al.*,
 23 Case No. 5:22-cv-02164-SSS-KK ("*Muto*") and a consolidated complaint was filed.

24 Doe 1 and Doe 2's appearance as anonymous plaintiffs in their initial complaint
 25 was proper and that remains so. "California courts have affirmed the ability to proceed
 26 as a pseudonymous plaintiff under circumstances in which privacy rights are implicated."
 27 *Doe v. Superior Court*, 3 Cal. App. 915, 919 (2016) "The judicial use of 'Doe plaintiffs'
 28 to protect legitimate privacy rights has gained wide currency, particularly given the

1 rapidity and ubiquity of disclosures over the World Wide Web.” *Starbucks Corp. v.*
 2 *Superior Court*, 168 Cal. App. 4th 1436, 1452, n. 7 (2008). As shown below, Plaintiffs
 3 Doe 1 and Doe 2 should be permitted to continue anonymously in this federal court
 4 proceeding.

5 **III. ARGUMENT**

6 **A. Applicable Legal Standard.**

7 In general, a plaintiff’s “use of fictitious names runs afoul of the public’s common
 8 law right of access to judicial proceedings, and [Federal Rules of Civil Procedure] 10(a)’s
 9 command that the title of every complaint ‘include the names of all the parties.’”
 10 *Advanced Textile Corp.*, 214 F.3d at 1067 (citations omitted) (citing *United States v. Doe*,
 11 655 F.2d 920, 922 n.1 (9th Cir. 1980)); *see also Roe v. Yasiel Puig*, 2021 WL 2497927
 12 (C.D. Cal. May 17, 2021). However, “parties [may] use pseudonyms in the unusual case
 13 when nondisclosure of the party’s identity is necessary to protect a person from
 14 harassment, injury, ridicule or personal embarrassment.” *Advanced Textile*, 214 F.3d at
 15 1067-68 (internal quotation marks and alterations omitted). Courts have permitted
 16 plaintiffs to proceed anonymously when: (1) “identification creates a risk of retaliatory
 17 physical or mental harm”; (2) “anonymity is necessary to preserve privacy in a matter of
 18 sensitive and highly personal nature”; and (3) “the anonymous party is compelled to
 19 admit [his or her] intention to engage in illegal conduct, thereby risking criminal
 20 prosecution.” *Id.* at 1068 (internal quotation marks omitted). To determine whether a
 21 party should be permitted to use a pseudonym, a court must determine whether, in the
 22 context of the specific stage of the proceedings, “the party’s need for anonymity
 23 outweighs prejudice to the opposing party and the public’s interest in knowing the party’s
 24 identity.” *Id.* (“The court must also determine the precise prejudice at each stage of the
 25 proceedings to the opposing party, and whether proceedings may be structured so as to
 26 mitigate that prejudice.”). Therefore, the Ninth Circuit determined, in *Advanced Textile*,
 27 that the use of a balancing test is appropriate to weigh the need for anonymity against the
 28 general presumption that litigants’ identities are public information and the risk of

1 prejudice to the opposing party. *Id.* at 1068. As shown below, the standard is satisfied
 2 here and Plaintiffs Doe 1 and Doe 2’s request to proceed anonymously is appropriately
 3 granted here.

4 **B. A Balancing of Applicable Factors Shows that Plaintiffs Doe 1 and Doe 2**
 5 **Should Be Permitted to Proceed Anonymously.**

6 **1. Anonymity is Necessary to Protect Plaintiffs’ Identities Considering the**
 7 **Highly Sensitive and Personal Nature of the Case and Use of the**
 8 **OnlyFans Platform.**

9 As shown above, courts have permitted parties to proceed using pseudonyms when
 10 nondisclosure “is necessary... to protect a person from harassment, injury, ridicule or
 11 personal embarrassment.” *Advanced Textile*, 214 F.3d at 1067-68 (citing *United States v.*
 12 *Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1980)). The court noted that proceeding under
 13 pseudonyms is generally permissible in three types of situations: “(1) when identification
 14 creates a risk of retaliatory physical or mental harm; (2) when identification is necessary
 15 to preserve privacy in a matter of sensitive and highly personal nature and (3) when the
 16 anonymous party is compelled to admit his or her intention to engage in illegal conduct,
 17 thereby risking criminal prosecution.” *Id.* at 1068 (internal citations omitted).

18 Here, the second factor is satisfied as concealment of Plaintiffs Doe 1 and Doe 2’s
 19 identities are necessary to preserve their privacy considering the highly sensitive and
 20 personal nature of the case given their prior use of the OnlyFans platform to access what
 21 many would consider private and potentially embarrassing material. While a variety of
 22 celebrities publish content on the platform to connect with their fans, it is well known
 23 that many people who work in the adult entertainment industry also publish content of a
 24 sensitive and adult nature on the platform.¹ Additionally, the OnlyFans platform has faced

25 ¹ See, e.g., Joshua Espinoza, *OnlyFans Explained: What You Need to Know About the*
 26 *NSFW Site*, COMPLEX (Apr. 4, 2023), [https://www.complex.com/life/a/joshua-](https://www.complex.com/life/a/joshua-espinoza/what-is-onlyfans-explainer)
 27 [espinoza/what-is-onlyfans-explainer](https://www.complex.com/life/a/joshua-espinoza/what-is-onlyfans-explainer), (“Over the course of the pandemic, as platforms
 28 like Instagram cracked down on demon time, OnlyFans became the center for all things
 adult—and more.... Launched in 2016, OnlyFans is a subscription-based social media
 platform where users can sell and/or purchase original content. When utilized as an adult

1 increased scrutiny by law enforcement, policymakers, and the media for evidence of
 2 harassment, doxing, cyberstalking, and image-based sexual abuse.² While OnlyFans has
 3 introduced various efforts to protect platform users and combat this unauthorized
 4 behavior, it is essential that the platform allow users sensitive to these risks to maintain
 5 anonymity to effectively combat many of these issues. The same concerns apply should
 6 users, like Plaintiffs Does 1 and Doe 2, who seek to step forward to vindicate and protect
 7 the legal rights of similarly situated consumers. While some consumers of the Only Fans
 8 platform (including the two other Plaintiffs) may not be as concerned by these issues,
 9 Doe 1 and Doe 2 are more sensitive to these risks and therefore, appropriately seek
 10 permission to appear anonymously to protect their rights and those of the putative class.

11 Further, use of the OnlyFans platform has led to scrutiny of certain individual
 12 users. For example, one user's family was "destroyed" after a family member took issue
 13 with something she posted on the OnlyFans platform.³ Other instances include the New
 14 York Post outing a local paramedic who participated on the platform as a creator. The
 15 individual was a private citizen whose actions were of no great public interest, however,
 16 the Post's publication of her personally identifiable information including her legal name,
 17 pictures, and social media handles created unwarranted and undesired public attention.⁴
 18 Another content creator reported "fans" showing up impromptu at her front door.⁵
 19 Opening up Plaintiffs Doe 1 and Doe 2 to possible familial or societal scrutiny simply for

20 _____
 21 site, users will post NSFW videos and photos to their accounts, which are protected by a
 22 paywall. To gain access to the content, an individual must pay a monthly subscription fee
 23 (hereinafter "HLR Decl.), Ex. A).

24 ² *OnlyFans: Mainstream Contributors to Sexual Exploitation*, NAT'L CTR. ON SEXUAL
 25 EXPLOITATION, (last visited Aug. 23, 2023), <https://endsexualexploitation.org/onlyfans>
 (HLR Decl., Ex. B.).

26 ³ Charlotte Shane, *OnlyFans Isn't Just Porn* ;), N.Y. TIMES MAG. (Sept. 28, 2021),
 27 <https://www.nytimes.com/2021/05/18/magazine/onlyfans-porn.html> (HLR Decl., Ex.
 C.).

28 ⁴ *Id.*

⁵ *Id.*

1 attempting to enforce rights granted by California law is unreasonable when it its able to
 2 be avoided through anonymous proceedings, while not creating any added burdens or
 3 prejudices to Defendants, the Class or the public.

4 **2. Courts Have Allowed Plaintiffs to Proceed Anonymously in Cases**
 5 **Involving Ridicule, Personal Embarrassment, or Social Stigmatization.**

6 Courts have allowed plaintiffs to move forward anonymously against OnlyFans
 7 and Fenix International, Inc. *See e.g., Doe v. Fenix Internet, LLC*, No. 1:21-cv-06624
 8 (N.D. Ill. filed Dec. 10, 2021). Social stigmatization is among the most compelling
 9 reasons for permitting anonymity. *See Jane Roes 1-2 v. SFBSC Mgmt., LLC*, 77 F. Supp.
 10 3d 990, 994 (N.D. Cal. 2015) (allowing nude dancers to proceed anonymously in a class
 11 action due to the risk of negative social stigmatization that may result from disclosure of
 12 their identities). As the court explained in *SFBSC Management*:

13 This district has thus considered “social stigmatization” among the “most
 14 compelling” reasons for permitting anonymity. This is consistent with the
 15 Ninth Circuit’s instruction in *Advanced Textile* that anonymity is permitted
 16 where the subject matter of a case is “sensitive and highly personal,” and
 17 where disclosing a party’s identity threatens to subject them to “harassment,
 18 ... ridicule or personal embarrassment.”

19 77 F. Supp. 3d at 994 (quoting *Advanced Textile*, 214 F.3d at 1067–68).

20 Courts have also found that allegations involving “the area of human sexuality”
 21 warrant protecting a plaintiff’s identity. *See SFBSC Mgmt.*, 77 F. Supp. 3d at 994 (“This
 22 case moreover falls into what may be roughly called the area of human sexuality. As
 23 SFBSC recognizes (*see* ECF No. 19 at 4–5), courts have often allowed parties to use
 24 pseudonyms when a case involves topics in this ‘sensitive and highly personal’ area”).
 25 While this can apply, as in *SFBSC Mgmt.*, to providers of such services, the stigma, risks
 26 and concerns can apply equally to consumers. Further, if revealing plaintiffs’ identities
 27 would result in possible mental or emotional harm, stress or other types of retaliation,
 28 including community retaliation, courts have permitted plaintiffs to proceed
 anonymously. *See Doe 1 v. Nat’l Collegiate Athletic Ass’n*, No. 22-cv-01559-LB, 2022
 WL 3974098 (N.D. Cal. Aug. 30, 2022). Allegations involving sensitive topics such as
 plaintiffs’ sexuality justify a request to proceed anonymously. *Id.* at *2; *see also Fleites*,

1 *et al., v. MindGeek, et al.*, No. 21-cv-04920-CJC, 2021 WL 2766886 (C.D. Cal. Jun. 28,
 2 2021); *J.C., v. Choice Hotels International, Inc. et al.*, No. 20-cv-00155-WHO, 2021 WL
 3 1146406 (N.D. Cal. Mar. 4, 2021).

4 Here, Plaintiffs' allegations relate to the use of an online platform that contains
 5 highly sensitive material resulting in likely social stigmatization. These allegations fall
 6 within "the area of human sexuality" and therefore warrant anonymity. Revelation of
 7 Plaintiffs Doe 1 and Doe 2's personal information and identities would likely result in
 8 social stigmatization and possible community retaliation if certain contacts they have
 9 were made aware (*e.g.*, family, work associates, potential employers). As such, Plaintiffs
 10 Doe 1 and Doe 2 should be allowed to proceed anonymously. Again, it should be noted
 11 that the Doe Plaintiffs here came forward to serve as class representatives for the benefit
 12 of members of the absent members of the putative class. Doing so should not carry the
 13 added risks, burdens, and costs associated with disclosure of their identities to the public,
 14 many of whom may frown on the type of content published on the Only Fans platform
 15 and users who elect to view it in private settings.

16 **3. Defendants Are Not Prejudiced By Allowing Plaintiffs To Proceed** 17 **Anonymously**

18 There is no prejudice to Defendants in allowing Plaintiffs to utilize a pseudonym
 19 in this matter.⁶ In the ordinary course of business, Defendants allow users to provide
 20 fictitious usernames and utilize other methods of identity concealment on the OnlyFans
 21 platform.⁷ OnlyFans states that it shares personal data with third parties only to ensure
 22 safety of OnlyFans users and as required by law.⁸ These safeguards allow users to operate
 23 anonymously on a platform that potentially has an attached social stigma associated with

24 ⁶ During the meet and confer process no prejudice was identified by Defendants from
 25 the request to have Doe 1 and Doe 2 proceed anonymously.

26 ⁷ While there are requirements to disclose your bank account and legal name to
 27 OnlyFans when signing up to the platform, users and content creators can keep their
 identity secret unless they prefer to show it.

28 ⁸ *Respecting Your Privacy*, ONLY FANS, <https://onlyfans.com/transparency-center/privacy> (last visited Aug. 23, 2023).

1 its use.

2 Very shortly after Doe 1 and Doe filed their claims, Defendants were made aware
3 of Doe 1 and Doe 2's identification by their counsel, allowing them to prepare their
4 defenses in the same manner they would had Plaintiffs' legal names appeared on the
5 Complaint. In this regard, any risk of prejudice was alleviated. *See, e.g., SFBSC Mgmt.*,
6 77 F. Supp. 3d at 995 (quoting *Advanced Textile*, 214 F.3d at 1069 n.11) (“‘[W]hatever
7 knowledge defendants have of plaintiffs’ identifies ... lessens their claims to be prejudiced
8 by the use of pseudonyms.’... The present plaintiffs have given SFBSC their real names
9 (under the confidentiality terms of the protective order entered in this case). This answers
10 both of SFBSC’s concerns.”).

11 Moving forward, Doe 1 and Doe 2 will comply with any court order, including an
12 appropriate protective order, so as to satisfy any due process concerns. As such,
13 Defendants are in no manner prejudiced if Plaintiffs are allowed to proceed
14 anonymously—Defendants are already aware of Doe 1 and Doe 2’s true identities,
15 allowing them to prepare any necessary defenses they may have for trial without delay.
16 This case involves statutory violations that apply broadly to members of the general
17 public of California. All Plaintiffs Doe 1 and Doe 2 seek is to remain anonymous to
18 members of the public having no direct interest in these proceedings. Likewise, in terms
19 of serving as a class representative, absent class members’ interest is confined to nature
20 and character of Doe 1 and Doe 2’s common transactions and dealings with Defendants’
21 platform, not their personal identities. That same information can be presented in a
22 manner that protects all interested parties’ rights, with the actual identities of Doe 1 and
23 Doe 2 being maintained in an anonymous manner.

24 **4. The Public Interest Is Not Harmed By Allowing Plaintiffs To Proceed** 25 **Anonymously**

26 An action that may chill a party’s willingness to litigate violations of statutes is
27 generally considered against public policy. *A.B.T. v. U.S. Citizenship & Immigration*
28 *Srvs.*, No. 2:11-CV-02108 RAJ, 2012 WL 2995064, at *6 (W.D. Wash. Jul. 20, 2012).

1 Permitting the use of a pseudonym therefore serves the public’s “interest in seeing this
 2 case decided on the merits.” *Advanced Textile*, 214 F.3d at 1073. As the Ninth
 3 Circuit has explained:

4 The public also has an interest in seeing this case decided on the merits.
 5 Employee suits to enforce their statutory rights benefit the general public.
 6 Moreover, as the Supreme Court has recognized, fear of employer
 7 reprisals will frequently chill employees’ willingness to challenge
 employers’ violations of their rights. Thus, permitting plaintiffs’ to use
 pseudonyms will serve the public’s interest in this lawsuit by enabling it
 to go forward.

8 214 F.3d at 1073 (internal citations omitted).

9 Therefore, “[p]arty anonymity does not obstruct the public’s view of the issues
 10 joined or the court’s performance in resolving them...[and] [t]he assurance of fairness
 11 preserved by public presence at a trial is not lost when one party’s cause is pursued under
 12 a fictitious name.” *Doe v. Stegall*, 655 F.2d 180, 185 (5th Cir. 1981).

13 The public interest will not be harmed by allowing Plaintiffs Doe 1 and Doe 2 to
 14 proceed anonymously in this matter. Concealing Plaintiffs’ legal names in no way affects
 15 the public’s ability to monitor this matter and scrutinize any legal issues. Similarly, the
 16 general public of California has an interest in seeing this matter decided on the merits. In
 17 contrast, should Doe 1 and Doe 2 not be permitted to proceed anonymously, it would
 18 likely have a detrimental effect on the Class and public as it will create additional burdens
 19 that likely hinder their ability to proceed and help vindicate consumers’ rights which are
 20 alleged to have been violated. As such, a balancing of all applicable factors weighs in
 21 favor of allowing Plaintiffs Doe 1 and Doe 2 to be permitted to proceed anonymously.

22 IV. CONCLUSION

23 Based upon the foregoing, Plaintiffs Doe 1 and Doe 2 respectfully request that this
 24 Court enter an order allowing them to proceed anonymously in this matter, using only
 25 pseudonyms.

26
 27 Respectfully submitted,

28 ZIMMERMAN REED LLP

1 Date: August 24, 2023

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